

BEFORE THE PRE-TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Case No.: 002/19-09-2007-ECCC/OCIJ (PTC 03)  
Filed to: Pre-Trial Chamber  
Date of Document: 20 July 2008  
Party Filing: Three Unrepresented Civil Parties (Case File No. 001)  
Original language: English  
Type of Document: Confidential

RESPONSE OF THREE UNREPRESENTED CIVIL PARTIES TO  
THE APPLICATION FOR RECONSIDERATION OF CIVIL PARTY'S  
RIGHT TO ADDRESS THE CHAMBER

Filed by:

Distribution:

Unrepresented Civil Parties

Pre-Trial Chamber



Judge PRAK Kimsan  
Judge Rowan DOWNING  
Judge NEY Thol  
Judge Katinka LAHUIS  
Judge HUOT Vuthy

*Prepared with the assistance of  
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ORIGINAL DOCUMENT/DOCUMENT ORIGINAL  
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):  
..... 21 / 07 / 2008 .....

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Unrepresented Civil Parties' Response to Civil Party's Application

## I. INTRODUCTION

1. This response is submitted pursuant to the Further Directions of the Pre-Trial Chamber (“PTC”), dated 14 July 2008, opening up the opportunity to Civil Parties in the Co-Investigating Judges’ Case File 001 to respond to the Application by the Civil Party, Ms. Theary Seng.<sup>1</sup> We, the respondents, are a group of three civil parties in Case File No. 001 as yet unrepresented by counsel. In preparing this submission, we have benefited from the assistance of Sarah Thomas, Legal Fellow of the Documentation Center of Cambodia, working in her personal capacity. In order to safeguard the rights of all unrepresented civil parties, we request that the PTC grant Ms. Seng’s application and re-open the hearing so that she may be heard. In addition, if it decides to re-open the hearing, we request that the PTC take measures to guarantee its expediency.

## II. RELEVANT FACTUAL BACKGROUND

2. On 1 July 2008, the PTC denied the then-represented Ms. Seng’s request to make an oral submission in person.<sup>2</sup> Subsequently, Ms. Seng dismissed her lawyer, Mr. Ny Chandy. The international Co-Lawyer for the Civil Parties, Ms. Silke Studzinsky, requested that the now unrepresented Ms. Seng be permitted to make an oral submission in person. The PTC issued an oral decision (“2 July Decision”) denying Ms. Seng’s request, finding that no civil party may address the bench in person during pre-trial appeals – whether represented or not by counsel – based on Internal Rule 77(10).<sup>3</sup> In a Dissenting Opinion, Judge Rowan Downing recognized the conflict between the provisions of Internal Rules 23 and 77(10) and opined that “it would be unfair... not to permit this Civil Party to address the Court.”<sup>4</sup>

<sup>1</sup> *Case of Ieng Sary*, Further Directions Concerning Application for Reconsideration of Civil Party’s Right to Address the Chamber, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 03), 14 July 2008, ERN 00203857 – 00203859, C22/I/59.

<sup>2</sup> *Case of Ieng Sary*, Decision on Preliminary Matters Raised by the Lawyers for the Civil Parties in Ieng Sary’s Appeal Against Provisional Detention Order, 002/19-09-2007-ECCC/OCIJ (PTC 03), 1 July 2008, ERN 00198102 – 00198104, C22/I/46.

<sup>3</sup> *Case of Ieng Sary*, Written Version of Oral Decision of 1 July 2008 on the Civil Party’s Request to Address the Court in Person, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 03), 3 July 2008, ERN 00198495 – 00198497, C22/I/54, para 3.

<sup>4</sup> *Case of Ieng Sary*, Written Version of Dissenting Opinion of Judge Rowan Downing of 1 July 2008 on the Civil Party’s Request to Address the Court in Person, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 03), 3 July 2008, ERN 00198495 - 00198497, C22/I/54, paras 1-4.

3. On 2 July 2008, Ms. Seng handed an application to the PTC for reconsideration of her right to address the bench in person.<sup>5</sup> She completed filing on 4 July.
4. On 8 July 2008, the PTC directed that the parties, including other civil parties in Case File 002, may file responses to the application and instructed that the application “should at this stage be read as a request to re-open the hearing to hear the Civil Party.”<sup>6</sup> Subsequently, on 14 July 2008, the PTC directed that civil parties in Case File 001 and the Co-Lawyers for other Charged Persons may file responses to the application.<sup>7</sup>

### III. RELEVANT LEGAL SOURCES

#### A. The Extraordinary Chambers

5. The Internal Rules (“IRs”) provide in Internal Rule 23(1)(a) that civil parties may participate in “proceedings” before the Extraordinary Chambers and do not place any express limitation on the types of proceedings in which civil parties may participate.<sup>8</sup> On 20 March 2008, the PTC interpreted this Rule to provide for civil party participation in appeals against provisional detention, finding that “the text of Internal Rule 23(1)(a) is clear in its wording that Civil Parties can participate in all criminal proceedings, which includes... appeals against provisional detention...”<sup>9</sup> Thus, the right to participation of civil parties encompasses participation in appeals against provisional detention.
6. In providing for civil party participation, Internal Rule 23(1)(a) does not require such participation to occur through a legal representative. In fact, Internal Rule 23(7) speaks of legal representation as a *right*, rather than as a requirement.<sup>10</sup> Furthermore, Internal Rule 23(8) supports the conclusion that, as a general rule, civil parties may participate in proceedings without a lawyer, as it accords the Co-Investigating Judges and the Chambers

<sup>5</sup> *Case of Ieng Sary*, Application of Reconsideration on Civil Party’s Right to Address Pre-Trial Chamber, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 03), 2 July 2008, ERN 00198482 – 00198487, C22/I/53.

<sup>6</sup> *Case of Ieng Sary*, Directions Concerning Application for Reconsideration of Civil Party’s Right to Address the Chamber, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 03), 8 July 2008, ERN 00198932 – 00198933, C22/I/56.

<sup>7</sup> *Case of Ieng Sary*, Further Directions Concerning Application for Reconsideration of Civil Party’s Right to Address the Chamber, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 03), 14 July 2008, ERN 00203857 – 00203859, C22/I/59.

<sup>8</sup> Internal Rules, rule 23(1)(a).

<sup>9</sup> *Case of Nuon Chea*, Decision on Civil Party Participation in Provisional Detention Appeals, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 01), 20 March 2008, ERN 00172886 – 00172906, C11/53, para 36.

<sup>10</sup> Internal Rules, rule 23(7).

the power to request an unrepresented civil party to choose a lawyer<sup>11</sup> or to appoint a lawyer for such a civil party.<sup>12</sup> As the Court may appoint a lawyer for a civil party only “[w]here the interests of Justice so require,”<sup>13</sup> the IRs impliedly permit civil parties to elect to represent themselves.

7. Although the IRs provide that “[t]he Chamber shall hear the Civil Parties...” during trial proceedings,<sup>14</sup> Rule 77(10) limits the ability of represented civil parties to make oral submissions during pre-trial appeals as it provides that “the Co-Prosecutors and the lawyers for the parties may present brief observations.”<sup>15</sup> In fact, the PTC has already directed that this Rule precludes civil parties from making oral submissions in person during pre-trial appeals. On 20 May 2008, the PTC directed that Internal Rule 77(10) should “be read to provide that Civil Parties *who have elected to be represented by a lawyer* shall make their brief observations... through their lawyer.”<sup>16</sup>
8. In limiting the right to make brief observations in pre-trial appeals to the lawyers for the parties, the drafters of Internal Rule 77(10) have failed to address the direct participation of unrepresented civil parties. As the IRs require that proceedings “be fair and adversarial and preserve a balance between the rights of the parties,”<sup>17</sup> unrepresented civil parties – as parties to the proceedings<sup>18</sup> – must be capable of exercising *all* functions accorded to the other parties. The PTC has impliedly recognized the ability of unrepresented civil parties to participate directly by limiting its direction that “oral submissions... shall be made by the lawyers” to only those civil parties “who have elected to be represented by a lawyer.”<sup>19</sup>

## B. Cambodian and French Law

<sup>11</sup> Internal Rules, rule 23(8)(a).

<sup>12</sup> Internal Rules, rule 23(8)(c).

<sup>13</sup> Internal Rules, rule 23(8)(c).

<sup>14</sup> Internal Rules, rule 91(1).

<sup>15</sup> Internal Rules, rule 77(10).

<sup>16</sup> *Case of Ieng Thirith*, Directions on Civil Party Oral Submissions During the Hearing of the Appeal Against Provisional Detention Order, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 02), 20 May 2008, ERN 00189459 – 00189460, C20/I/21, para 5 (emphasis added by author).

<sup>17</sup> Internal Rules, rule 21(1)(a).

<sup>18</sup> Internal Rules, rule 23(6)(a).

<sup>19</sup> *Case of Ieng Thirith*, Directions on Civil Party Oral Submissions During the Hearing of the Appeal Against Provisional Detention Order, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 02), 20 May 2008, ERN 00189459 – 00189460, C20/I/21.

9. Like the IRs, the Cambodian Criminal Procedure Code (“Cambodian Code”) provides for the participation of civil parties in proceedings<sup>20</sup> and permits civil parties to participate with or without a lawyer.<sup>21</sup> As the IRs are a consolidation of “applicable Cambodian procedure,”<sup>22</sup> domestic law offers guidance as to the genesis of Internal Rule 77(10). While its procedures must, as a general rule, “be in accordance with Cambodian law,” the Court may apply international procedural standards if “Cambodian law does not deal with a particular matter, or... there is a question regarding the consistency of such a rule with international standards...”<sup>23</sup>
10. The provisions of the Cambodian Code on oral submissions by civil parties mirror those of the IRs in many respects. In describing pre-trial procedure, Article 260(2) provides – in language strikingly similar to Internal Rule 77(10) – for brief oral submissions to be made by the lawyers.<sup>24</sup> In contrast, the Cambodian Code expressly provides for oral submissions by represented civil parties at the trial stage,<sup>25</sup> implying that the drafters intended to preclude represented civil parties from making oral submissions at the pre-trial stage. Like the IRs, the Cambodian Code fails to close the lacuna created with respect to unrepresented civil parties.
11. As Cambodian procedural law is based upon French procedural law, there exist numerous similarities between the provisions of the French Code of Criminal Procedure (“French Code”) and those of the IRs and the Cambodian Code. First, the French Code does not require a civil party to have a lawyer, though he or she “has the right to be assisted by an

<sup>20</sup> Criminal Procedure Code of the Kingdom of Cambodia, 2007, art. 2.

<sup>21</sup> Criminal Procedure Code of the Kingdom of Cambodia, 2007, art. 313. In support of the historic ability of civil parties to participate in proceedings without a lawyer in Cambodia, *see also* Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period, 10 September 1992, art. 27(1): “Victims or their beneficiaries may directly or through counsel bring a civil action in a criminal case...”

<sup>22</sup> Internal Rules, pmbi.

<sup>23</sup> Agreement Between the UN and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, 2003, art. 12(1).

<sup>24</sup> Criminal Procedure Code of the Kingdom of Cambodia, 2007, art. 260(2). Article 260(2) provides: « Après le rapport du président de la chambre d’instruction, le procureur général près la cour d’appel et les avocats présentent des observations sommaires. »

<sup>25</sup> Criminal Procedure Code of the Kingdom of Cambodia, 2007, art. 326(1). *See also* Criminal Procedure Code of the Kingdom of Cambodia, 2007, art. 335(1)(a) (according the civil party a right to make brief observations as part of the closing statements in addition to those of his or her lawyer).

advocate of their choice...<sup>26</sup> Second, the French Code provides that, in the event of hearings on appeals against pre-trial detention, "...the prosecutor general and the advocates of the parties... present summary observations."<sup>27</sup> Third, the French Code fails to address the direct participation of unrepresented civil parties in such appeals.

#### a. International Standards

12. The provisions of two United Nations General Assembly resolutions prove instructive as to the requisite standards for victim participation at the international level. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power establishes that, for justice to be achieved, states must "[a]llow[] the views and concerns of victims to be presented and considered... [during judicial] proceedings..."<sup>28</sup> The Basic Principles and Guidelines on the Right to a Remedy and Reparation obliges states to "[p]rovide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice."<sup>29</sup>

### IV. ARGUMENT

#### A. Represented Civil Parties Must Make Any Oral Submissions Through Their Lawyers in Pre-Trial Appeals

13. Considering that express provision is made for direct participation in trial proceedings,<sup>30</sup> the absence in Internal Rule 77(10) of provision for such during pre-trial appeals indicates that the drafters intended to preclude represented civil parties from making oral submissions. On at least two occasions, the PTC has confirmed that represented civil parties may not speak in person during pre-trial appeals.<sup>31</sup> The PTC may interpret the IRs

<sup>26</sup> French Code of Criminal Procedure, updated 1 January 2006, art. 53-1(3), available at <http://www.legifrance.gouv.fr>. See also French Code of Criminal Procedure, updated 1 January 2006, art. 75(3).

<sup>27</sup> French Code of Criminal Procedure, updated 1 January 2006, art. 199(2).

<sup>28</sup> *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by General Assembly Resolution 40/34, 29 November 1985, principle 6(b).

<sup>29</sup> *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by General Assembly Resolution 60/147, 16 December 2005, para 3(c).

<sup>30</sup> Internal Rules, rule 91(1).

<sup>31</sup> *Case of Ieng Thirith*, Directions on Civil Party Oral Submissions During the Hearing of the Appeal Against Provisional Detention Order, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 02), 20 May 2008, ERN 00189459 - 00189460, C20/1/21; *Case of Ieng Sary*, Decision on Preliminary Matters Raised by the Lawyers for the Civil Parties

as it sees fit, provided such interpretation does not violate the rights of any of the parties. Thus, we submit that the PTC was correct in denying Ms. Seng's request of 30 June 2008 to speak in person as a represented civil party.

14. By requiring that only the civil parties' lawyers make oral submissions, the PTC promotes the efficient conclusion of the proceedings "within a reasonable time," as required by the IRs.<sup>32</sup> As the PTC has recognized, the number of civil parties has already increased.<sup>33</sup> The Co-Lawyers of certain Charged Persons have warned that participation by large numbers of victims may considerably lengthen the proceedings in violation of their clients' right to be tried without delay.<sup>34</sup> Provided that their views and concerns are presented by their lawyers, such limitation of represented civil parties' ability to participate directly is entirely appropriate. In the interests of efficiency, represented civil parties should not be able to circumvent Internal Rule 77(10) by reserving a right to speak, as Ms. Seng purports to have done.<sup>35</sup>

15. Contrary to Ms. Seng's contention, victims do not possess a "fundamental right" to be heard in person.<sup>36</sup> Rather, international standards provide that victims have a right to present their "views and concerns..."<sup>37</sup> The PTC has found that civil parties have "rights... to written and oral participation in the proceedings..."<sup>38</sup> As his or her lawyer may present any views or concerns, the PTC does not violate this right to oral participation by prohibiting direct participation by represented civil parties in pre-trial appeals. Like us, most civil parties are likely content to have lawyers speak for them. Thus, contrary to the

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in Ieng Sary's Appeal Against Provisional Detention Order, 002/19-09-2007-ECCC/OCIJ (PTC 03), 1 July 2008, ERN 00198102 – 00198104, C22/I/46.

<sup>32</sup> Internal Rules, rule 21(4).

<sup>33</sup> *Case of Ieng Thirith*, Directions on Civil Party Oral Submissions During the Hearing of the Appeal Against Provisional Detention Order, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 02), 20 May 2008, ERN 00189459 - 00189460, C20/I/21, para 4.

<sup>34</sup> *Case of Nuon Chea*, Joint and Several Submissions on Civil-Party Participation in Appeals Related to Provisional Detention, , Case No. 002/19-09-2007-ECCC/PTC, 22 February 2008, ERN 00164866 – 00164877, C11/45, para 28.

<sup>35</sup> *Case of Ieng Sary*, Application of Reconsideration on Civil Party's Right to Address Pre-Trial Chamber, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 03), 2 July 2008, ERN 00198482 – 00198487, C22/I/53, p. 2.

<sup>36</sup> *Case of Ieng Sary*, Application of Reconsideration on Civil Party's Right to Address Pre-Trial Chamber, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 03), 2 July 2008, ERN 00198482 – 00198487, C22/I/53, p. 2.

<sup>37</sup> *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by General Assembly Resolution 40/34, 29 November 1985, principle 6(b).

<sup>38</sup> *Case of Nuon Chea*, Decision on Civil Party Participation in Provisional Detention Appeals, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 01), 20 March 2008, ERN 00172886 – 00172906, C11/53, para 44.

warning of the civil parties' international Co-Lawyer,<sup>39</sup> this limitation is unlikely to encourage many civil parties to dismiss counsel in order to speak in person.

**B. Unrepresented Civil Parties Have the Right to Make Direct Oral Submissions in Pre-Trial Appeals**

16. As the PTC has already found, "Civil Parties have active rights to participate starting from the investigative stage of the procedure."<sup>40</sup> Oral submissions constitute an integral feature of participation. Thus, if this right to participate is to prove meaningful, civil parties not represented by counsel (as permitted by the IRs<sup>41</sup>) must be able to make oral submissions directly to the bench. As they lack an advocate to make oral submissions on their behalf, this is the logical conclusion of permitting civil parties to participate without a lawyer. In its Directions of 20 May 2008, the PTC reached the same conclusion when it read Rule 77(10)'s limitation of oral submissions to the lawyers for the parties as precluding only represented civil parties from speaking in person.<sup>42</sup>

17. The Pre-Trial Chamber should not consider Rule 77(10)'s failure to provide for oral submissions by unrepresented civil parties as fatal. The IRs contain numerous flaws. Rule 77(10) has been imported directly from the Cambodian Code<sup>43</sup> and, in turn, the French Code<sup>44</sup> without amendment, resulting in the omission of provision for direct participation by unrepresented civil parties. In the case of lacunae, the Court must decide in accordance with the IRs' fundamental principles and international standards.<sup>45</sup> By according unrepresented civil parties lesser rights, Rule 77(10) is inconsistent with both the fundamental principle and international standards requiring that "a balance shall be

<sup>39</sup> *Case of Ieng Sary*, Oral Submission of International Co-Lawyer for Certain Civil Parties, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 03), 1 July 2008.

<sup>40</sup> *Case of Nuon Chea*, Decision on Civil Party Participation in Provisional Detention Appeals, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 01), 20 March 2008, ERN 00172886 – 00172906, C11/53, para 36.

<sup>41</sup> Internal Rules, rule 23(7).

<sup>42</sup> *Case of Ieng Thirith*, Directions on Civil Party Oral Submissions During the Hearing of the Appeal Against Provisional Detention Order, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 02), 20 May 2008, ERN 00189459 - 00189460, C20/I/21, para 5.

<sup>43</sup> Criminal Procedure Code of the Kingdom of Cambodia, 2007, art. 260(2).

<sup>44</sup> French Code of Criminal Procedure, updated 1 January 2006, art. 199(2).

<sup>45</sup> See Internal Rules, rule 2.



maintained between the rights of the parties<sup>46</sup> and that victims have equal access to justice.<sup>47</sup>

18. The PTC's 2 July Decision sets a very worrying precedent for the participation of unrepresented civil parties, as it precludes them from meaningfully presenting their views and concerns at the pre-trial stage. As warned by Judge Downing, it would be unfair not to allow Ms. Seng and, presumably, other unrepresented civil parties to address the bench.<sup>48</sup> By according us lesser rights, the PTC effectively penalizes civil parties such as ourselves for failing to instruct a lawyer, even though the IRs do not require this. The PTC's position proves particularly inappropriate as many civil parties, such as ourselves, are not unrepresented by choice. The Extraordinary Chambers does not fund legal representation of civil parties and few experienced lawyers are willing to work on a *pro bono* basis.
19. A correct reading of the IRs accords the same rights to all civil parties, regardless of whether represented by counsel. While civil parties' oral submissions to date may have delayed the proceedings somewhat,<sup>49</sup> the PTC should respond to this problem by more effectively managing the proceedings, rather than placing a blanket prohibition on such submissions. As we have not as yet secured legal representation, we remind the PTC that our rights stand to be adversely affected vis-à-vis those of our represented counterparts if it does not reconsider its 2 July Decision. We ask that the PTC grant Ms. Seng's request and re-open the hearing so that she may be heard. If it decides to re-open the hearing, we request that the PTC consider the following measures to guarantee its expeditious conduct.

**C. The Chamber Should Adopt a Pro-Active Approach Towards Management of Oral Submissions to Ensure the Expediency of the Proceedings**

<sup>46</sup> Internal Rules, rule 21(1)(a).

<sup>47</sup> *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by General Assembly Resolution 60/147, 16 December 2005, para 3(c).

<sup>48</sup> *Case of Ieng Sary*, Written Version of Dissenting Opinion of Judge Rowan Downing of 1 July 2008 on the Civil Party's Request to Address the Court in Person, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 03), 3 July 2008, ERN 00198495 - 00198497, C22/I/54, para 4.

<sup>49</sup> *Case of Nuon Chea*, Joint and Several Submissions on Civil-Party Participation in Appeals Related to Provisional Detention, Case No. 002/19-09-2007-ECCC/PTC, 22 February 2008, ERN 00164866 - 00164877, C11/45, para 28 ("Several hours of judicial time was spent on lengthy submissions which did not depart in any way from the OCP position.")

20. It would be appropriate and desirable for the PTC – in the re-opened hearing and in others – to adopt a particularly pro-active approach towards the regulation of oral submissions by unrepresented civil parties. The IRs require that the Judges “maintain good order”<sup>50</sup> and “guarantee the free exercise of defence rights,”<sup>51</sup> which include the right “to be tried without delay.”<sup>52</sup> Robust management of civil parties’ oral submissions proves increasingly important as the number of civil parties has increased, as noted by the Pre-Trial Chamber,<sup>53</sup> and will continue to increase as more civil parties join the proceedings. As they generally lack legal training,<sup>54</sup> the PTC should more actively manage the oral submissions made by unrepresented civil parties.
21. In order to ensure the expeditious conduct of the proceedings, the PTC should: (a) continue to limit the time allocated for civil parties’ oral submissions; (b) require civil parties to address the specific issue(s) under consideration; and (c) prevent civil parties from repeating arguments made by other parties. By implication, the President of the PTC possesses the power to “exclude any proceedings that unnecessarily delay the trial, and are not conducive to ascertaining the truth.”<sup>55</sup> The Judges should use this power to prevent irrelevant or repetitive submissions by civil parties *during the hearing* rather than excluding such submissions retrospectively, as it has done previously.<sup>56</sup>
22. Where these measures prove insufficient to ensure the expeditious conduct of the hearing, the PTC should organize for the representation and grouping of civil parties. Where, for example, an unrepresented civil party lacks the legal expertise to make a meaningful contribution or fails to follow the Chamber’s procedure or orders, the PTC may ask the

<sup>50</sup> See Internal Rules, rule 85(2) (referring to proceedings before the Trial Chamber).

<sup>51</sup> See Internal Rules, rule 85(1) (referring to proceedings before the Trial Chamber).

<sup>52</sup> Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, 2001 as promulgated on 27 October 2004, art. 35 new (c).

<sup>53</sup> *Case of Ieng Thirith*, Directions on Civil Party Oral Submissions During the Hearing of the Appeal Against Provisional Detention Order, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 02), 20 May 2008, ERN 00189459 - 00189460, C20/I/21, para 4.

<sup>54</sup> We note, however, that Ms. Seng has been legally trained.

<sup>55</sup> See Internal Rules, rule 85(1) (referring to the President of the Trial Chamber).

<sup>56</sup> *Case of Nuon Chea*, Decision on Appeal Against Provisional Detention Order of Nuon Chea, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 01), 20 March 2008, ERN 00172907 - 00172934, C11/54, para 6 (disregarding Ms. Seng’s victim statement in deciding the appeal).

civil party to choose a lawyer within a set time limit.<sup>57</sup> If the civil party fails to do so – and only “[w]here the interests of Justice so require” – the PTC has the power to appoint a lawyer for the civil party.<sup>58</sup> In the event of a very large number of unrepresented civil parties, the PTC may find that it has the power to require individual civil parties to form a group with common representation to avoid an overwhelming number of submissions.<sup>59</sup>

## V. CONCLUSION

23. We, the respondents, request that the PTC grant Ms. Theary Seng’s Application and reopen the hearing so that she may be heard. By precluding the direct participation of unrepresented civil parties in pre-trial appeals, the 2 July Decision violates their right to have their views and concerns presented and considered during a judicial proceedings and results in unequal access to justice for victims of the Democratic Kampuchea regime, such as ourselves.
24. In order to ensure the expeditious conduct of the re-opened hearing, we ask that the PTC continue to limit the time allocated for civil parties’ oral submissions, prevent irrelevant or repetitious oral submissions, and consider whether the appointment of a lawyer for Ms. Seng would be “in the interests of Justice.”

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<sup>57</sup> Internal Rules, rule 23(8)(a).

<sup>58</sup> Internal Rules, rule 23(8)(c).

<sup>59</sup> See Internal Rules, rules 23(8)(a) and 23(8)(c). The power to force grouping of individual civil parties can be implied from Internal Rules 23(8)(a) and (c). For more on grouping, see *Case of Nuon Chea*, Amicus Brief of Anne Heindel on the Issue of Civil Party Participation in Appeals Against Provisional Detention Orders, Case No. 002/19-09-2007-ECCC/OCIJ (PTC 01), 20 February 2008, ERN 00164255 – 00164265, C11/38, paras 20 -23.

C2215167

**For these reasons, we ask that the Pre-Trial Chamber:**

Grant the application of the Civil Party, Ms. Theary Seng,  
and re-open the hearing so that she or her appointed lawyer may be heard.

Thumbprint:



Name: \_\_\_\_\_ (Civil Party)

Date: July 20, 2008

Location: \_\_\_\_\_

Thumbprint:



Name: \_\_\_\_\_ (Civil Party)

Date: July 20, 2008

Location: \_\_\_\_\_

Thumbprint:



Name: \_\_\_\_\_ (Civil Party)

Date: July 20, 2008

Location: \_\_\_\_\_